

AMENDED IN ASSEMBLY MAY 25, 2012

AMENDED IN ASSEMBLY MAY 2, 2012

AMENDED IN ASSEMBLY APRIL 11, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1646**

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**Introduced by Assembly Member Campos  
(Coauthors: Assembly Members Alejo and V. Manuel Pérez)**

February 13, 2012

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An act to add and repeal Article 6 (commencing with Section 12099) of Chapter 1.6 of Part 2 of Division 3 of Title 2 of the Government Code, relating to state government.

LEGISLATIVE COUNSEL'S DIGEST

AB 1646, as amended, Campos. California Demonstration of Emerging Market Opportunities Act.

The Governor's Office of Business and Economic Development serves as the Governor's lead entity for economic strategy and the marketing of California on issues relating to business development, private sector investment, and economic growth. The office, among others, makes recommendations to the Governor and the Legislature regarding policies, programs, and actions to advance statewide economic goals.

Commencing January 1, 2014, this bill would require the office to implement and administer the California Demonstration of Emerging Market Opportunities Act, which would allow state agencies to enter into demonstration agreements, as defined, with specified businesses and nonprofit organizations to test, evaluate, or demonstrate innovative solutions pursuant to demonstration projects and pilot projects, as

defined. The bill would authorize an agency to assess a fine of up to \$10,000 against a business or nonprofit organization that falsifies or fails to disclose information in connection with a project, as specified. These provisions would be repealed as of January 1, 2019.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. The Legislature finds and declares all of the  
2 following:

3 (a) California is home to many of the world's leading technology  
4 companies, and the state seeks to spur economic growth, including  
5 job growth, by supporting innovation by these companies.

6 (b) Despite California leading the nation in innovation and the  
7 number of patents filed annually, emerging small technology  
8 businesses face a myriad of challenges throughout their  
9 development process.

10 (c) In order to achieve the desired growth, innovative businesses  
11 require support that reaches beyond traditional business incubators  
12 and that streamlines the commercialization of innovative products,  
13 services, and processes. The state can provide this support by  
14 partnering to provide companies with an opportunity to demonstrate  
15 their innovative products, services, and processes while also  
16 increasing public awareness of these innovative solutions. This  
17 may be accomplished by using underutilized state resources.

18 (d) The Governor's Office of Business and Economic  
19 Development has launched a new, forward-thinking Innovation  
20 Hub (iHub) initiative in an effort to harness and enhance  
21 California's innovative spirit. The iHub initiative improves the  
22 state's national and global competitiveness by stimulating  
23 partnerships, economic development, and job creation around  
24 specific research clusters through state-designated iHubs. The  
25 iHubs will leverage assets, such as research parks, technology  
26 incubators, universities, and federal laboratories, to provide an  
27 innovation platform for startup companies, economic development  
28 organizations, business groups, and venture capitalists.

29 SEC. 2. Article 6 (commencing with Section 12099) is added  
30 to Chapter 1.6 of Part 2 of Division 3 of Title 2 of the Government  
31 Code, to read:

Article 6. California Demonstration of Emerging Market  
Opportunities Act

12099. (a) Commencing January 1, 2014, the Governor's Office of Business and Economic Development shall implement and administer the California Demonstration of Emerging Market Opportunities (CalDEMO) Program.

(b) The CalDEMO Program shall be designed to provide businesses and nonprofit organizations with the opportunity to do all of the following:

(1) Experience engaging with the state in the process of planning, deploying, demonstrating, and maintaining their innovation.

(2) Obtain high-profile public exposure for the business or nonprofit organization demonstrating an innovative solution or pilot project.

(3) Obtain data collection on a project's real-time performance in a public setting.

(4) Demonstrate that their innovation can be deployed, operated, and maintained in a real-world setting.

(5) Demonstrate that their business or nonprofit organization has the capacity to sufficiently plan, deploy, operate, and maintain their innovation in a real-world setting.

(6) Access new markets for innovative products.

12099.1. For purposes of this article, the following terms shall be defined as follows:

(a) "Demonstration project" means a project involving a request from a business or nonprofit organization to make state resources available as a forum for testing, evaluating, or demonstrating an innovative solution before being deployed in the marketplace.

(b) "Innovative solution" means a product, process, service, or information technology that is new or improves upon an existing product, process, service, or information technology. An innovative solution shall be expected to deliver identifiable and measurable environmental, economic, or social benefits, enhanced performance, or increases to the overall process reliability or control. An innovative solution shall also consist of a specific and identifiable research component.

(c) "Demonstration agreement" means an agreement between a state agency and a business or nonprofit organization to test,

1 evaluate, or demonstrate an innovative solution pursuant to a  
2 demonstration project or pilot project.

3 (d) “Pilot project” means a project involving a request from a  
4 business or nonprofit organization to make state resources available  
5 as a forum for testing, evaluating, or demonstrating an innovative  
6 solution that is currently available in the marketplace.

7 12099.2. The Director of the Governor’s Office of Business  
8 and Economic Development shall designate an innovation  
9 partnership coordinator, who shall do all of the following:

10 (a) Provide guidance to the office and other state agencies  
11 regarding the interpretation and the application of the CalDEMO  
12 Program.

13 (b) Review and assist, as necessary, in the development of  
14 proposed demonstration agreements.

15 (c) Track and report on all approved demonstration agreements.  
16 The innovation partnership coordinator shall report to the office  
17 regarding the implementation and administration of the CalDEMO  
18 Program and the status of all approved demonstration agreements.

19 (d) Serve as a contact person for inquiries about the CalDEMO  
20 Program and serve as a liaison to connect potential business and  
21 nonprofit organization partners with appropriate state agencies.

22 (e) Develop and issue guidelines that are necessary for the  
23 fulfillment of this article.

24 (f) Establish in the State Administrative Manual policies and  
25 procedures for state agencies to engage with the CalDEMO  
26 Program.

27 12099.3. (a) (1) The office shall, ~~at least annually,~~ issue a  
28 request for proposals from businesses and nonprofit organizations  
29 for the ~~CalDemo~~ CalDEMO Program.

30 (2) A business or nonprofit organization may, at any time,  
31 submit a proposal for a demonstration project or pilot project to  
32 the office. If the innovation partnership coordinator has the  
33 resources, the coordinator shall review the proposal.

34 (b) The business’s or nonprofit organization’s proposal shall  
35 include, but is not limited to, the following information:

36 (1) Background on the business or nonprofit organization  
37 submitting the proposal.

38 (2) A description of the proposed project, including whether  
39 the proposed project is a pilot project or a demonstration project.

1 (3) Identification of a problem that the proposed innovative  
2 solution seeks to address.

3 (4) Performance measures that will be used to evaluate the  
4 success of the project at the conclusion of the agreement.

5 (5) A list of requested state resources that could be used to  
6 implement the project, including state-owned land, facilities,  
7 equipment, rights-of-way, or data that is reasonably necessary.

8 (6) Certification that the proposed project meets all current  
9 applicable industry standards, laws, and applicable regulations.

10 (7) Any other information deemed relevant by the office,  
11 including information necessary for the office to prepare the report  
12 as required by this article.

13 (8) *The office shall target the sectors for participation in the*  
14 *CalDEMO Program. The office may limit applicants or*  
15 *applications by any factors it deems appropriate, given the*  
16 *resources available to the office to administer the program.*

17 (c) The office shall provide a preference for startup companies  
18 based in California. For purposes of this section, “startup  
19 companies based in California” means a small business, as defined  
20 in paragraph (1) of subdivision (d) of Section 14837, that has its  
21 headquarters in California and produces the innovative solution  
22 or pilot project to be demonstrated in California or a business that  
23 has an office in California and substantially manufactures the  
24 innovative solution or pilot project in California or substantially  
25 develops the research for the innovative solution or pilot project  
26 to be demonstrated in California.

27 (d) The office may charge a fee to the business or nonprofit  
28 organization to process the proposal that shall not exceed the  
29 reasonable costs to the office.

30 (e) The office ~~shall~~ *may* establish guidelines to implement the  
31 requirements of this article.

32 12099.4. (a) To ensure the efficient implementation and  
33 administration of the CalDEMO Program, the innovation  
34 partnership coordinator ~~shall~~ *may* do all of the following:

35 (1) Establish an investment advisory group to review and  
36 comment on proposals.

37 (2) Review proposals, including comments from the advisory  
38 group, and make a determination that the proposal meets the  
39 threshold requirements of the law and guidelines adopted pursuant  
40 to this article.

1 (3) Upon making the determination in paragraph (2), the  
2 innovation partnership coordinator shall identify and refer the  
3 proposal to the appropriate state agency or agencies. If the  
4 innovation partnership coordinator determines that it is appropriate  
5 to refer the proposal to more than one agency, the coordinator shall  
6 identify a lead state agency for the purpose of the review.

7 (4) The innovation partnership coordinator shall convene an  
8 initial meeting with the business or nonprofit organization and the  
9 appropriate state agency or agencies. Following the initial meeting,  
10 the appropriate state agency or the lead state agency, in the case  
11 of more than one agency, may hold additional meetings and request  
12 information from the business or nonprofit organization. The  
13 appropriate state agency or lead agency shall keep the innovation  
14 partnership coordinator informed of its discussions with the  
15 business or nonprofit organization.

16 (5) If the appropriate state agency or agencies approve of the  
17 proposal, the innovation partnership coordinator shall coordinate  
18 and oversee the development of a demonstration agreement  
19 between the appropriate state agency and the business or nonprofit  
20 organization. A state agency shall act in good faith to assist in the  
21 development of a demonstration agreement.

22 (b) The business or nonprofit organization participating in the  
23 program shall, pursuant to guidance provided by the innovation  
24 partnership coordinator and appropriate state agencies, develop a  
25 scope of work that sets forth details on how the demonstration  
26 project or pilot project is to be implemented.

27 (c) A proposed demonstration agreement shall include, but is  
28 not limited to, the following requirements:

29 (1) The proposed demonstration agreement shall identify the  
30 project as a pilot project or demonstration project.

31 (2) The proposed demonstration agreement shall describe the  
32 project, including, but not limited to, a description of the types of  
33 activities to be undertaken, facilities and resources to be used, and  
34 relevant timelines, including a start and termination date.

35 (3) The proposed demonstration agreement shall identify the  
36 participating state agency or agencies.

37 (4) The proposed demonstration agreement shall include  
38 performance measures that will be used by the business or nonprofit  
39 organization to evaluate the project. The data obtained during the

1 implementation of the project may assist the state to better manage  
2 its own resources.

3 (5) The proposed demonstration agreement shall include a  
4 provision that the business or nonprofit organization agrees to  
5 indemnify the state against any liability or damages that may result  
6 from the project.

7 (6) The proposed demonstration agreement shall include a  
8 provision that authorizes the innovation partnership coordinator  
9 or the state agency to discontinue the project if it finds that the  
10 business or nonprofit organization has falsified or withheld  
11 information that should have been disclosed.

12 (7) The proposed demonstration agreement shall include a  
13 provision that the business or nonprofit organization agrees to  
14 purchase insurance coverage necessary, as determined by the state,  
15 to cover the costs to the state for any risks.

16 (8) The proposed demonstration agreement shall include a  
17 provision that sets the maximum costs that the state can incur,  
18 including the methodology used to determine the costs.

19 (9) The proposed demonstration agreement shall include a  
20 certification that the demonstration project or pilot project is safe  
21 for state employees and the public.

22 (10) The proposed demonstration agreement shall include other  
23 information or provisions determined by the innovation partnership  
24 coordinator to be relevant to the successful and safe undertaking  
25 of the project.

26 (d) For purposes of a proposed demonstration agreement, the  
27 state agency may do all of the following:

28 (1) With approval of the appropriate state agency, authorize the  
29 temporary use of state-owned land, facilities, equipment,  
30 rights-of-way, or data that are reasonably necessary in conjunction  
31 with the project.

32 (2) To the extent that the state may benefit from a demonstration  
33 project or pilot project, the state agency may absorb a portion of  
34 the costs to implement the project, in an amount not to exceed the  
35 anticipated benefits to the state of participating in the project.

36 (3) Agree to nondisclosure agreements relating to proprietary  
37 information that the state acquires from a business or nonprofit  
38 organization during the implementation of a demonstration  
39 agreement.

1 (4) Perform or cause to be performed a safety assessment of the  
2 project. If the state agency has reason to believe that the project  
3 is unsafe or likely to cause any danger, the state agency shall  
4 discontinue the project.

5 12099.5. (a) Demonstration agreements must be approved by  
6 all participating state agencies. After receiving approval from the  
7 participating state agencies, the office shall provide the final  
8 approval of the demonstration agreement.

9 (b) The office shall post on its Internet Web site a brief  
10 description of each demonstration agreement, including information  
11 on anticipated outcomes. The office shall not make available any  
12 proprietary information that is subject to a nondisclosure agreement  
13 under paragraph (3) of subdivision (d) of Section 12099.4.

14 (c) The office shall biennially post on its Internet Web site  
15 information on the progress of the program. ~~Within 30 days of~~  
16 ~~positing this information, the office shall send a letter to the~~  
17 ~~Assembly Committee on Jobs, Economic Development, and the~~  
18 ~~Economy and the Senate Committee on Business, Professions and~~  
19 ~~Economic Development notifying the committees that the~~  
20 ~~information is available and where the information is located on~~  
21 ~~the office's Internet Web site. The posted information may include~~  
22 ~~information on the state of the demonstration agreements,~~  
23 ~~challenges to program implementation, and recommendations for~~  
24 ~~program improvement.~~

25 12099.6. (a) The office may enter into a partnership with  
26 foundations or private sector sponsors to solicit funding for the  
27 implementation of the CalDEMO Program. It is the intent of the  
28 Legislature that the office seek private sector sponsors and partners  
29 and foundations to solicit funding for the implementation of the  
30 CalDEMO Program consistent with paragraph (f) of Section  
31 12096.3.

32 (b) The office may enter into a memorandum of understanding  
33 or an interagency agreement to obtain technical, scientific, or  
34 administrative services or expertise to support the CalDEMO  
35 Program. It is the intent of the Legislature that state agencies with  
36 appropriate subject matter expertise provide input to the office  
37 when requested.

38 (c) The office may enter into an agreement, including a  
39 memorandum of understanding, with another state agency or  
40 organization for the purpose of implementing the CalDEMO



1 Program. The agreement shall be entered into for the purpose of  
2 reducing costs to the state, reducing or sharing risk, or obtaining  
3 technical, scientific, or administrative services or expertise. The  
4 agreement shall also specify, including, but not limited to, the  
5 metrics to be evaluated in determining whether the project is  
6 successful.

7 12099.7. It is the intent of the Legislature that the state shall  
8 not seek to co-own or procure any share of rights in the intellectual  
9 property that is developed during participation in the program.

10 12099.8. Any party to a demonstration agreement, including  
11 employees or potential subcontractors, shall comply with all  
12 applicable laws, regulations, and any other requirements pertaining  
13 to the implementation and execution of the demonstration  
14 agreement.

15 12099.9. If at any time a representative of a business or  
16 nonprofit organization is found by clear and convincing evidence  
17 to have falsified or withheld information that should have been  
18 disclosed, the state agency may discontinue the project and assess  
19 a fine of up to ten thousand dollars (\$10,000) against the business  
20 or nonprofit organization for a failure to comply with this section.

21 12100. This article shall remain in effect only until January 1,  
22 2019, and as of that date is repealed.